



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Matthew J. Strickler
Secretary of Natural Resources

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Virginia Electric and Power Company FOR Belcher Solar PV Area Unpermitted Activity – NP 20-000971

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and VEPCO, regarding the Belcher Solar PV Area property, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Belcher Solar PV Area" or "Property" or "Site" means the tract of land at the intersection of Waldrop Church Road and Desper Road, Patrick Henry, Virginia 23903, located in Louisa County, and owned by VEPCO.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
7. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
8. "Impacts" means results caused by those activities specified in § 62.1-44.15:20 A of the Code of Virginia.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c)

contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

15. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
18. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VEPCO" means Virginia Electric and Power Company, a corporation authorized to do business in Virginia. VEPCO is a "person" within the meaning of Va. Code § 62.1-44.3.
22. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. VEPCO owns and is constructing the solar facility infrastructure at the Property in Patrick Henry, Louisa County, Virginia.
2. The construction project is permitted under the General VPDES Permit for Discharges of Stormwater from Construction Activities, under registration number VAR10N574, however it is not permitted under the DEQ Virginia Water Protection program, which oversees discharges of fill material to state waters.
3. In compliance with the state water control law and regulations, VEPCO notified DEQ on July 23, 2020, of unauthorized discharges of sediment, a pollutant, from the Site to unnamed tributaries and wetlands of Harris Creek at the Belcher Solar PV Area project.

Sediment discharges were reported in several locations across the Site, resulting in impacts to 1,841 linear feet of stream channel, and 0.23 acre of wetland.

4. Harris Creek is a surface water located in the York River watershed, and is listed in DEQ's 305(b) report as impaired for recreational usage four miles downstream from the Property. The unnamed tributaries of Harris Creek and adjacent wetlands are located wholly within the Commonwealth, and is a "state water" under the State Water Control Law.
5. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit filling of wetlands and altering the physical, chemical, or biological properties of state waters and making them detrimental to the public health, animal or aquatic life without a Permit issued by the Director. VEPCO does not have a Permit for the above activities.
6. On August 17, 2020, DEQ issued NOV No. 2008-001521 for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
7. On September 14, 2020, Department staff met with representatives of VEPCO to discuss the violations and corrective actions taken by VEPCO. VEPCO alleged that it had completed off-site remediation of all impacted streams and wetlands identified in the NOV prior to the call, and that, as requested by DEQ in the August 24, 2020, inspection report, revisions to the project's erosion and sediment control plan were being developed for submission to the local VESCP.
8. On October 9, 2020, VEPCO submitted a formal response to the NOV, which detailed erosion and sediment control plan revisions that had been completed and submitted to the local authority, i.e., Louisa County, for review and approval. Additionally, this response indicated that: erosion and sediment control repairs and improvements had been implemented in critical areas at the Property; sediment had been hand-removed from impact areas, and stabilization measures enacted; and a monitoring plan through the 2021 growing season was put in place for the impacted wetland areas.
9. On February 25, 2021, VEPCO submitted the January 20 dated approval letter from the VESCP authority, approving the erosion and sediment control plan revisions as detailed in the October 9, 2020, response letter.
10. The unpermitted discharge of fill material to the unnamed tributaries of Harris Creek and adjacent wetlands without a Permit is a violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
11. Based on documentation submitted on July 23, 2020, the Board concludes that VEPCO has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, as described in paragraphs C(1) through C(10), above.
12. VEPCO has submitted documentation that verifies that the violations described in paragraphs C(1) through C(11), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders VEPCO, and VEPCO agrees to pay a civil charge of \$50,700 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

VEPCO shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, VEPCO shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of VEPCO for good cause shown by VEPCO, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, VEPCO admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. VEPCO consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. VEPCO declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial

review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by VEPCO to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. VEPCO shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. VEPCO shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. VEPCO shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and VEPCO. Nevertheless, VEPCO agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after VEPCO has completed all of the requirements of the Order;
- b. VEPCO petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to VEPCO.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve VEPCO from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by VEPCO and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of VEPCO certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind VEPCO to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of VEPCO.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, VEPCO voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 1st day of July, 2021.


Thomas A. Faha, Regional Director
Department of Environmental Quality

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Virginia Electric and Power Company voluntarily agrees to the issuance of this Order.

Date: 3/8/2021 By: [Signature] (Person) VP, Chief Environmental Officer (Title)
Virginia Electric and Power Company

Commonwealth of Virginia
(City/County of) Richmond

The foregoing document was signed and acknowledged before me this 8th day of March, 2021, by Amanda B. Tornabene who is Vice-President of Virginia Electric and Power Company, on behalf of the corporation.

[Signature]
Notary Public

7022016

Registration No.

My commission expires: 3/31/2022

Notary seal:

